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DECISION



James A. Sullivan
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-189844

DATE: November 15, 1977

MATTER OF: Titan Southern States Construction Corporation

DIGEST:

Grantee's acceptance of bid which failed to list proposed subcontractors as required by solicitation but which contained notation "to be furnished if low bidder" is proper where listing requirement is not intended to prevent "bid shopping" but serves to furnish grantee with information regarding bidder responsibility in connection with subcontractor and contractor ability to meet contract's equal employment opportunity and minority business utilization requirements.

Titan Southern States Construction Corporation (Titan) has filed a complaint against the award of a contract by the Metropolitan Atlanta Rapid Transit Authority (MARTA) to Barge & Company (Barge). The contract is for the construction of the above-ground portions of an automatic train washing facility and a facility for pneumatically cleaning the undersides of transit vehicles and is funded, in part, under a grant from the United States Department of Transportation, Urban Mass Transit Administration (UMTA) pursuant to the Urban Mass Transportation Act, 49 U.S.C. § 1601 et seq. (1970 and Supp. V 1975).

MARTA issued the invitation for bids (IFB) for contract No. CE373 on May 31, 1977. The pertinent portions of the IFB are as follows:

"A2.5.2 Designation of Subcontractors. Bidders shall furnish with their Bids the names of known prospective subcontractors with whom the Bidder intends to contract for work at the Project site. The names of such prospective subcontractors shall be indicated on the standard form, Designation of Subcontractor. Subcontracting requirements are specified in Articles A8.2 and A8.3.

"A2.5.3.1 Prior to the award of the Contract, the Authority will require the low responsive Bidder to furnish, in writing, the names of additional prospective subcontractors not listed in the Bid, and such Bidder shall provide to the Authority the qualifications and employment data of all known prospective subcontractors. The prospective subcontractors' qualifications shall be listed on the standard form, Statement of Qualifications and Business References. The subcontractors' employment data shall be listed in the applicable forms indicated in Appendix A of the Invitation for Bids. Copies of these forms may be obtained from the Engineer.

"A2.5.3.2 If a Specification section indicates that the work of that section shall be accomplished by subcontractors having certain work experience, the names of those subcontractors, and a resume of those subcontractor's work experiences, shall be submitted, prior to award, as specified in Article A2.5.3.1. If the Bidder elects to perform that certain work with his forces, evidence of the Bidder's qualifications shall be submitted as required for subcontractors."

At bid opening on July 13, 1977, Barge submitted the low bid at \$795,000; Titan submitted the second low bid at \$908,800. The form "Description of Subcontractors" that Barge submitted with its bid listed no subcontractors but contained, instead, the notation "To be submitted if low bidder." Subsequently, Barge did submit the names of the prospective subcontractors and the contract was awarded to Barge on July 25, 1977. Titan claims that under decisions of this Office, a bidder's failure to submit a list of proposed subcontractors when required by the invitation renders the bid nonresponsive, and therefore the acceptance of Barge's bid was improper.

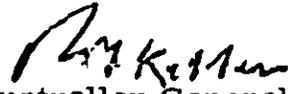
UMTA advises that the purpose of the subcontractor listing requirement is to enable MARTA to obtain information from which it can evaluate "the subcontractors' qualifications to perform their work and to meet the Authority's (MARTA's) equal employment opportunity and minority business utilization requirements."

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Accordingly, and in view of IFB Articles 2.5.3.1 and 2.5.3.2, which require the low responsive bidder to submit prior to award the names and resumes of additional subcontractors not listed in the bid or those subcontractors required by the specifications to have certain work experience, MARTA urges that Barge's failure to list any subcontractors in its bid is a matter of bidder responsibility rather than bid responsiveness.

Titan correctly points out that this Office has frequently upheld the rejection of bids because of the failure to list subcontractors. See, for example, 43 Comp. Gen. 206 (1963); James and Stritzke Construction Company, 54 Comp. Gen. 159 (1974), 74-2 CPD 128; Piland Construction Company, Inc., B-183077, April 25, 1975, 75-1 CPD 262; Coronis Construction Company, et al., B-186733, August 19, 1976, 76-2 CPD 177. In these cases, the information was required to prevent "bid shopping" by prime contractors for lower priced subcontractors and the intent of the subcontractor listing clause was to bind the prime contractors to those lists of subcontractors submitted with their bids. However, where subcontractor listings are not required to prevent bid shopping, but instead are required for the purpose of determining the qualifications and thus the responsibility of the bidder, a bid may not be regarded as nonresponsive merely because it does not contain such a listing. 53 Comp. Gen. 27 (1973); 51 id. 329 (1971); B-177984, July 30, 1973. In the instant case, we think it is clear that the subcontractor listing requirement was not related to the prevention of bid shopping, since the IFB specifically allowed the low responsive bidder to make additional subcontract arrangements after submitting its bid and an overall reading of the subcontractor provisions indicates that MARTA's concern was with the qualifications of the proposed subcontractors. Therefore, the "bid shopping" cases are not applicable here, and Barge's failure to submit the subcontractor listing with its bid did not render its bid nonresponsive.

Deputy


Comptroller General
of the United States